

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

BENITO HERNANDEZ, Jr.,

Plaintiff,

v.

No. CV 18-135 CG

NANCY A. BERRYHILL,
Acting Commissioner of the
Social Security Administration,

Defendant.

**ORDER AWARDING ATTORNEY FEES PURSUANT TO
THE EQUAL ACCESS TO JUSTICE ACT, 28 U.S.C. § 2412(d)**

THIS MATTER is before the Court on the parties' *Stipulated Motion for Award of Attorney Fees Under the Equal Access to Justice Act*, (Doc. 33), filed February 25, 2019, in which the parties agree to an award of \$6,763.65 in attorney fees.

IT IS THEREFORE ORDERED that Plaintiff be awarded \$6,763.65 in attorney fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d). *See Astrue v. Ratliff*, 560 U.S. 586, 591-93 (2010) (providing EAJA fees are paid to the prevailing party, not the attorney).

IT IS FURTHER ORDERED that if Plaintiff's counsel receives attorney fees under both the EAJA and 42 U.S.C. § 406(b), Section 206(b) of the Social Security Act, Plaintiff's counsel shall refund the smaller award to Plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

IT IS SO ORDERED.



THE HONORABLE CARMEN E. GARZA
CHIEF UNITED STATES MAGISTRATE JUDGE